Supreme Court, U.S.
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No. 02-152

IN THE

Supreme Court of the United States

LOIS E. MARX,

Petitioner,

v.

MERIDIAN BANCORP, INC. LONG TERM DISABILITY PLAN; JOHN DOES 1-10, IN THEIR CAPACITIES AS MEMBERS OF THE ADMINISTRATIVE COMMITTEE ON EMPLOYEE BENEFIT PLANS (AKA THE BENEFITS DESIGN COMMITTEE); METROPOLITAN LIFE INSURANCE COMPANY; CORESTATES FINANCIAL CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. **Whether the Court should deny certiorari where the Court of Appeals' decision involves the application of well-settled principles of contract interpretation and ERISA?**

2. **Whether the Court should deny certiorari to consider an issue already resolved in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989)?**

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE

The Petitioner is Lois E. Marks, the plaintiff before the District Court and appellant before the Circuit Court. Respondents are Meridian Bancorp, Inc. Long-Term Disability Plan; John Doe's 1 through 10, in their capacities as members of the Administrative Committee on Employee Benefit Plans (a/k/a the Benefits Design Committee); Metropolitan Life Insurance Company; CoreStates Financial Corporation, the defendants before the District Court and appellees before the Circuit Court.

The parent company of CoreStates Financial Corporation, by virtue of mergers, is Wachovia Corporation, and there are no other publicly held companies owning ten percent or more of the corporation's stock.

Meridian Bancorp, Inc. Long Term Disability Plan is an employee benefit plan sponsored by Wachovia Corporation, as a successor by merger.

The parent company of Metropolitan Life Insurance Company is MetLife, Inc., and there are no other publicly held companies owning ten percent or more of the corporation's stock.

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I. COUNTERSTATEMENT OF THE CASE

A. Introduction

This case involves a 1997 decision by Metropolitan Life Insurance Company (MetLife") to deny long-term disability benefits to Lois E. Marx ("Marx") under the Meridian Bancorp, Inc. Long Term Disability Plan (the "Plan"), a welfare benefit plan regulated by the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461 ("ERISA"). The Plan was established by Marx's former employer, Meridian Bank.[1]

While Marx raises a procedural issue concerning the standard of review, it is notable that neither the District Court nor the Court of Appeals found any grounds to question the substantive conclusion that Marx was not disabled under the Plan. Indeed, the denial of benefits was supported by, among other things, (a) an independent medical examination, (b) two reports from independent physicians who reviewed Marx's medical records, and (c) the analysis of one of MetLife's in-house nurses.

Marx now asks this Court to review MetLife's denial of benefits under the pretext that MetLife was not an ERISA fiduciary and as such, its decision should not have been given any deference by the lower courts. Marx further claims that the allegedly incorrect standard of review applied by the lower courts creates "dangerous" precedent and a split in the Circuit Courts.

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[1] Meridian Bank was a subsidiary of Meridian Bancorp, Inc. which was subsequently merged into CoreStates Financial Corporation. For ease of reference, Meridian and CoreStates will be referred to herein as "Meridian."

Contrary to Marx's arguments, neither the decision to deny benefits nor the subsequent review by the lower courts were in any way inconsistent with applicable law. To the contrary, as explained in detail below, this case involves principles of straightforward contract interpretation that were properly applied by the lower courts.

B. Opinions Below

On September 8, 1999, Marx filed suit in the United States District Court for the Eastern District of Pennsylvania seeking review of the denial of her claim for long-term disability benefits under the Plan.

When reviewing a denial of benefits under an ERISA plan, courts are required to apply a deferential standard of review if the relevant plan documents give an administrator discretionary authority to interpret the plan terms to determine eligibility for benefits. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Here, Firestone was applied in a routine context: a review of a benefit determination by a third-party administrator of a self-funded ERISA plan.

The District Court reviewed the Plan documents and found that the Plan provided the necessary language to convey discretionary authority to MetLife. While the District Court did not find an express grant of discretionary authority, it found that discretion was implied by the Plan's terms and the circumstances surrounding the parties' relationship.

Using the arbitrary and capricious standard, the District Court then reviewed Marx's substantive claims. After reviewing, among other things, Marx's records,

reports from the independent medical examiner, reports from two independent physicians who reviewed Marx's records, and the analysis of one of MetLife's in-house nurses, the District Court held that MetLife's denial of benefits was neither arbitrary nor capricious, and granted summary judgment in favor of defendants and dismissed Marx's claims.

The Court of Appeals affirmed the District Court's decision, finding no basis to disturb its rulings on Marx's substantive claims. Yet the Court of Appeals disagreed with the District Court's conclusion that the Plan did not provide an express grant of discretion. After reviewing the language of the Plan, the Court of Appeals held the Plan was "clear on its face" in granting discretionary authority to MetLife. The Court of Appeals thus agreed with the District Court's application of an arbitrary and capricious standard of review, but did so after finding that the Plan expressly granted discretionary authority to MetLife.

The Court of Appeals also rejected the argument that non-ERISA fiduciaries cannot exercise discretion and trigger the arbitrary and capricious standard of review. The Court of Appeals first noted that nothing limited the deferential standard of review to ERISA fiduciaries. To the contrary, the Court pointed out that case law and ERISA itself supports granting discretionary authority to non-ERISA fiduciaries, and in turn, applying the correspondingly deferential arbitrary and capricious standard of review. The Court of Appeals noted that in Firestone, 489 U.S. at 115, this Court explicitly declared that a benefit plan may confer discretionary authority to either a fiduciary or an administrator. Equally significant, the Court noted that ERISA allows fiduciaries to delegate fiduciary responsibility to non-fiduciaries. 29 U.S.C. § 1105(c)(1).

C. The Present Petition

Marx seeks Certiorari before this Court for two reasons. First, she alleges that the Court of Appeals incorrectly applied the arbitrary and capricious standard of review to a decision made by an entity with no fiduciary responsibility. Second, Marx alleges that the Court of Appeal's holding that the deferential standard is not limited to ERISA fiduciaries conflicts with Firestone and the holdings of other Circuit Courts.

As explained below, Marx's arguments neither have merit nor present any issues warranting review by this court.

II. REASONS FOR DENYING THE WRIT OF CERTIORARI

This case presents no unsettled or controversial legal issues, and the resolution of Marx's claims will have no impact on the public at large. Instead, the case involves basic principles of contract interpretation and the application of well-settled areas of ERISA law. Although Marx mischaracterizes the Court of Appeal's holding and other relevant case law in attempt to fashion a conflict in the law that does not exist, her attempt fails and no reason exists for this Court to grant certiorari.

A. The Decision Below Involves Well-Settled Principles of Contract Interpretation and ERISA

The center of the dispute here is whether the Plan conveyed discretionary authority to MetLife, the third party administrator for the Plan. The answer to that question is necessarily found in the Plan itself, and as such, requires interpretation of the document. Indeed, as noted below, Marx's entire argument hinges on the interpretation of a single provision of the Plan and whether that provision granted discretion to MetLife; therefore, her argument is in reality one of contractual interpretation. In this regard, the lower courts properly interpreted the Plan within the parameters of well-settled law.

At its core, Marx's argument relies on a series of legally incorrect and/or factually inaccurate assumptions. Thus, Marx relies on the following assumptions: (1) that the Plan did not grant discretion to MetLife; (2) that MetLife was a non-fiduciary under the facts of this case; and (3) that a third party administrator cannot exercise discretion under Firestone. None of Marx's assumptions have merit.

1. The Plan Granted Discretionary Authority to MetLife

As the lower courts held, the Plan grants discretion to MetLife to make the final decision on a claim for benefits. Indeed, the Court of Appeals held that Plan Section 6.04(j) unambiguously grants discretionary authority to MetLife.

To support her argument that MetLife lacked discretion, Marx cites only part – and not all - of Plan

Section 6.04(j) to support her argument. In fact, Marx ignores the most important and relevant clause of the sentence. [Petition, p. 10]. The relevant text of Section 6.04(j) provides:

> Upon request for review Plan Administrator will arrange and supervise a full review of the claims by the Claims Administrator, ***whose decision after such a review shall be final***. (emphasis supplied).

Thus, while Marx claims that the language about the Plan Administrator "arranging and supervising" a review means that MetLife lacked discretion, she ignores the fact that the Plan unambiguously calls on MetLife to render the "final" decision. Her argument is, in essence, one of contract interpretation and does not implicate an important policy question for this Court to review.

Just as significantly, Marx's contract interpretation argument is wrong. When, as here, a plan grants the claims administrator discretionary authority to determine eligibility for benefits, courts are required to apply a deferential standard of review. Firestone, 489 U.S. at 115. In Firestone, this Court confronted the issue of judicial review where an employer (also the plan administrator) denied an employee's benefits under an ERISA plan. Ultimately, the Firestone Court found that where there was no evidence that the administrator had the "power to construe uncertain terms or that determinations are to be given deference" so a de novo standard of review applied. Id. at 115.

In its analysis, the Firestone court interjected the principles of contract law by requiring that the discretionary powers be conferred through the terms of the plan document interpreted with regard to the intention of the settlor (i.e., the employer or plan sponsor):

> The terms of trusts created by written instruments are "determined by the provisions of the instrument as interpreted in light of all the circumstances and such other evidence of the intention of the settlor with respect to the trust is not inadmissible."

489 U.S. at 112 (emphasis added). Here, the plan sponsor's intention is clear: to have MetLife exercise the discretion to render "final" decisions. This is not surprising when context is considered. The plan sponsor was a bank with no particular expertise in disability and it therefore quite logically delegated final decision making authority to MetLife, an expert in disability claims.

Thus here, as with the review of the language of any other contract, the Court of Appeals reviewed the Plan language to determine whether the Plan granted MetLife discretionary authority. And, after a review of the Plan language, the Court of Appeals found that the Plan, in fact, unambiguously granted MetLife discretionary authority. The Court's interpretation of the Plan was correct and presents no issue warranting review by this Court.

2. MetLife was Acting as a Fiduciary

Marx assumes that MetLife was not acting in a fiduciary capacity and therefore frames the issue as whether an arbitrary and capricious standard of review can be applied to the decision of a non-fiduciary. But both the applicable regulations and case law confirm that MetLife was acting as a fiduciary in exercising the discretionary authority provided to it in the Plan. In short, Marx's petition asks the wrong question.

The Department of Labor's regulations provide that an individual who exercises authority on behalf of an ERISA fiduciary in interpreting and administering a plan will be deemed a fiduciary. 29 CFR § 2509.75-8, Question D-3. Such individuals may include a "benefit supervisor" who has the final authority to deny benefits. Id. Thus, when discretion is bestowed to a third party administrator on behalf of an ERISA fiduciary, the third party administrator acts as a fiduciary when it exercises its discretion.

Similarly, the circuit courts have found – without exception - that a third party administrator, when granted discretionary authority on behalf of an ERISA fiduciary, is also a fiduciary. See, e.g. Prudential Ins. Co. of America v. Doe, 140 F.3d 785 (8th Cir. 1998) (insurer is a fiduciary when it retains final discretionary authority to decide employee's claims); Kyle Railways, Inc. v. Pacific Administration Services, Inc., 990 F.2d 513, 517-18 (9th Cir. 1993) (insurer is a fiduciary when granted discretionary responsibility to make final claims decisions); cf. Terry v. Bayer, 145 F.3d 28 (1st Cir. 1998) (administrator not a fiduciary because plan administrator retained discretionary authority); Flacche v. Sun Life Assurance Co. of Canada; 958 F.2d 730 (6th Cir. 1992)

(administrator not a fiduciary because duties limited to ministerial functions with no discretionary control over plan).

This case law is consistent with cases from this Court which have repeatedly confirmed that one may become a fiduciary, regardless of any formal designation or title, by virtue of the discretion one exercises in the administration of a plan. Pegram v. Herdrich, 530 U.S. 211, 223 (2000); Lockheed Corp. v. Spink, 517 U.S. 882, 890 (1996); Varity Corp. v. Howe, 516 U.S. 489, 502-503 (1996).

In support of her argument that MetLife was not a fiduciary and, therefore, could not exercise discretion under ERISA, Marx focuses on the Administrative Services Agreement ("ASA") and glosses over the Plan provisions which confer discretion on MetLife. Her argument fails for three reasons.

First, the Plan, not the ASA, is the document that Firestone points to for determining whether discretion is granted. Firestone, 489 U.S. at 115. While an ASA might be sufficient to supply discretion where the Plan is silent, it is not sufficient to overcome a clear grant of discretion made under the terms of the Plan. That should be especially clear here where MetLife had discretion under the terms of the Plan and exercised that discretion in rendering a final decision on the claim. Again, both the applicable regulations and case law confirm that MetLife was acting as a fiduciary.

Second, Marx's reliance on a disclaimer of fiduciary status in the ASA is inconsistent with ERISA. Unequivocally, ERISA will not permit a party to escape fiduciary duties through disclaimers or use of titles. 29

U.S.C. § 1110(a) (disclaimer of fiduciary responsibility violates public policy). Instead, the test for fiduciary status is a functional one that depends on discretion over a plan's management, assets or administration. Pegram, 530 U.S. at 223. Thus, if MetLife in fact had discretion, which it did, the language of the ASA will not transform MetLife into a non-fiduciary.

Finally, as the District Court noted, many of the provisions of the ASA confirm that MetLife was, in fact, exercising discretion. Among other things, the ASA identifies actual fiduciary functions for MetLife. For example, Section C.4 of the ASA outlines certain adjudicatory services MetLife will provide including, but not limited to, arranging for independent medical examinations. Such fiduciary functions prove that MetLife was not only granted discretionary authority, but exercised it, despite the disclaimer in the ASA.

3. Principles of Trust Law Do Not Require Deviation From The Arbitrary and Capricious Standard of Review In Light of the Plan's Grant of Discretionary Authority to MetLife

Marx argues that allowing a third party administrator to exercise discretion would be inconsistent with trust law principles and therefore is not allowed under ERISA. Even if MetLife was not acting as a fiduciary in exercising the final decision making authority conferred by the Plan, Marx's extensive reliance on trust law fails under both the statutory provisions of ERISA and Firestone.

First, while ERISA and trust law may be analogous, they are not identical. This concept was underscored in

Mertens v. Hewitt Assoc., 508 U.S. 248 (1993), where the Court addressed the question of whether a non-fiduciary - the plan's actuary – who knowingly participated in the plan's fiduciaries' breach of fiduciary duty could be held liable under ERISA. In its analysis, the Court distinguished ERISA from trust law, pointing out that 29 U.S.C. § 1105(a) contains liability only for co-fiduciaries, which the Court found to be a deliberate omission by Congress of the common law's liability for both co-trustees and third persons. Id. Importantly, the Court emphasized that "vague notions of a statute's 'basic purpose' are nonetheless inadequate to overcome the words of its text regarding the specific issue under consideration." Id. at 261 (citing Pension Benefit Guaranty Corp. v. LTV Corp., 469 U.S. 633 (1990)).

Marx declares that the lower courts have established precedent that "will undermine the trust law principles inherent in ERISA" and that the Third Circuit's reasoning "subverts the principles of trust law upon which the Supreme Court relied in Firestone." [Petition, p. 10]. But the lower courts neither established unorthodox precedent nor "subverted" the Firestone holding based on trust law: as shown above, trust law and ERISA are not the mirror images that Marx claims.

And, there is no question that the Firestone Court emphasized that discretion could be conferred to either a fiduciary or an administrator. 489 U.S. at 115. The Firestone Court reached this conclusion after examining trust law concepts; therefore, Marx's argument is tantamount to asking the Court to review Firestone in light of trust law concepts the Firestone Court already addressed.

Marx's position is even less persuasive when one considers the Mertens Court's admonition that vague

notions of ERISA's basic purpose will not overcome the statute's provisions. ERISA contemplates that fiduciaries may delegate authority to others to act on their behalf. 29 U.S.C. §1105(c). To the extent MetLife was not acting as a fiduciary (as it was), it plainly was acting under a delegation of authority from the Plan Administrator, a practice which is endorsed by ERISA and therefore not subject to challenge under concepts of trust law. Mertens, 508 U.S. at 261.

B. The Court of Appeals' Decision Does Not Conflict With Other Circuits

As provided in detail above, the Firestone court, aware of the fact that benefit plans have administrators, held that discretionary authority may be granted to administrators. Without exception, lower courts have followed the Firestone court's interpretation of discretionary authority as applied to plan administrators. Thus, the cases Marx cites to support her interpretation of Firestone are cases with distinctly different facts than those presented here.

For example, Marx cites Sanford v. Harvard Indus., 262 F.3d 590 (6th Cir. 2001), and Sharkey v. Ultramar Energy LTD, 70 F.3d 226 (2nd Cir. 1995), to support a conflict in the circuits. However, unlike the facts of this case, in both Sanford and Sharkey, the decisions to deny benefits were made by a party that did not have discretionary authority.

In Sanford, the decision to deny benefits was made by the employer and not the joint management and labor board envisioned by the Plan. Sanford, 262 F.3d at 595. Therefore, because the party with discretionary authority -

the board - did not make the decision to deny benefits, the de novo standard of review applied.

In Sharkey, the issue was a factual one concerning who actually made the decision to deny benefits. 70 F.3d at 230. The Sharkey court found that the plan documents granted a pension committee discretionary authority to act as a fiduciary, but the employee alleged that his employer, not the pension committee, made the decision to deny benefits. Id. The Sharkey court remanded the case to the district court to make the factual determination of which entity denied the claim.

Similarly inapposite to the facts here, in Gritzer v. CBS, Inc., 275 F.3d 291 (3d Cir. 2002), the court found that an administrator with discretionary authority failed to exercise discretion by not responding to a claim for benefits until after the litigation had been commenced. Here, it is undisputed that MetLife responded to the claim. Thus, Gritzer does not confirm any split of authority; indeed, it has little to do with the facts of Marx's case.

Here, MetLife made the decision to deny benefits and had "final" discretion to do so under the terms of the Plan. As the Court of Appeals held, the Plan unambiguously granted discretion to MetLife, which it then exercised in deciding Marx's claim. Therefore the Plan's provisions were followed, and cases like Sharkey and Sanford simply do not apply.

Marx also cites Baker v. Big Star Division of the Grand Union Co., 893 F.2d 288 (11th Cir. 1990), a case where the alleged fiduciary did not have discretionary authority. Id. at 290. Because the administrator was not granted the authority to review benefit denials and make the ultimate decisions regarding eligibility, it could not be a

fiduciary. Id. (noting that the third party administrator had "not been granted the authority to review benefit denials and make the ultimate decision regarding eligibility.")

Again, as explained previously, MetLife had the discretionary authority to review benefit denials and make the ultimate decisions regarding eligibility, and indisputably exercised that authority in deciding Marx's claim. Thus, there is no split of authority for the Court to resolve.

III. CONCLUSION

For the reasons stated above, Respondents respectfully request this Court to deny Petitioner's Petition for a Writ of Certiorari.

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